

APPEAL NO. 180304
FILED MARCH 28, 2018

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on April 4, 2017, and concluded on December 18, 2017, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issues in Docket No. HW-16-146010-03-CC-HD49 (Docket No. 1) by deciding that: (1) the employer made a bona fide offer of employment (BFOE) to the appellant (claimant) entitling the respondent (carrier) to adjust the post-injury weekly earnings from August 9, 2016, through the date of the CCH; and (2) the claimant did not have disability from August 9, 2016, and continuing through the date of the CCH resulting from an injury sustained on (date of injury). The ALJ resolved the disputed issues in Docket No. HW-16-146010-04-CC-HD49 (Docket No. 2) by deciding that: (1) the compensable injury of (date of injury), does not extend to a right rotator cuff tear; (2) the claimant reached maximum medical improvement (MMI) on February 3, 2016; and (3) the claimant's impairment rating (IR) is five percent.

The claimant appealed, disputing all of the ALJ's determinations. The claimant pointed out in her appeal that the ALJ failed to include a finding of fact regarding the extent-of-injury issue, and that the ALJ did not correctly explain her mechanism of injury in the decision. The carrier responded, urging affirmance of the ALJ's determinations.

DECISION

Reversed and remanded.

The parties stipulated, in part, that the claimant sustained a compensable injury that includes bilateral shoulder contusion, left hip contusion, and cervical sprain/strain, and the date of statutory MMI is November 8, 2017. The claimant testified she was injured when the tractor on which she was driving rolled over after she clipped a culvert to avoid an oncoming car. The claimant also testified that the tractor did not roll over her. We note that the ALJ stated in her discussion that the tractor tipped to the left side while the claimant was driving on a graded slope.

Section 410.168 provides that an ALJ's decision contain findings of fact and conclusions of law, a determination of whether benefits are due, and an award of benefits due. 28 TEX. ADMIN. CODE § 142.16 (Rule 142.16) provides that a ALJ's decision shall be in writing and include findings of fact, conclusions of law, and a determination of whether benefits are due and if so, an award of benefits due.

The ALJ states in Conclusion of Law No. 3, the summary on page one, and the Decision portion of the decision and order that the compensable injury of (date of injury), does not extend to a right rotator cuff tear. However, the ALJ made no findings of fact whether the compensable injury extends to a right rotator cuff tear. Because the ALJ's decision contains no findings of fact regarding the extent-of-injury issue, which was an issue properly before the ALJ to resolve, it does not comply with Section 410.168 and Rule 142.16. We therefore reverse the ALJ's determination that the compensable injury of (date of injury), does not extend to a right rotator cuff tear as being incomplete, and we remand the issue of whether the compensable injury of (date of injury), extends to a right rotator cuff tear. See Appeals Panel Decision (APD) 132339, decided December 12, 2013.

The issues of MMI, IR, BFOE, and disability are all dependent upon the resolution of the extent-of-injury issue. Because we have reversed the ALJ's extent-of-injury determination and remanded that issue to the ALJ, we also reverse the ALJ's determinations that the claimant reached MMI on February 3, 2016, that the claimant's IR is five percent, that the employer tendered a BFOE to the claimant entitling the carrier to adjust the post-injury weekly earnings from August 9, 2016, through the date of the CCH, and that the claimant had no disability resulting from the compensable injury of (date of injury), beginning on August 9, 2016, and continuing through the date of the CCH, and we remand all of these issues to the ALJ for further action consistent with this decision.

SUMMARY

We reverse the ALJ's determination that the compensable injury of (date of injury), does not extend to a right rotator cuff tear as being incomplete, and we remand this issue to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the claimant reached MMI on February 3, 2016, and we remand the issue of the claimant's date of MMI to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the claimant's IR is five percent, and we remand the issue of the claimant's IR to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the employer tendered a BFOE to the claimant entitling the carrier to adjust the post-injury weekly earnings from August 9, 2016, through the date of the CCH, and we remand this issue to the ALJ for further action consistent with this decision.

We reverse the ALJ's determination that the claimant had no disability resulting from the compensable injury of (date of injury), beginning on August 9, 2016, and continuing through the date of the CCH, and remand this issue to the ALJ for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand the ALJ is to make findings of fact and corresponding conclusions of law and a decision regarding whether the compensable injury of (date of injury), extends to a right rotator cuff tear. The ALJ is then to make findings of fact, conclusions of law, and a decision on whether the employer made a BFOE to the claimant entitling the carrier to adjust the post-injury weekly earnings, and if so for what period; whether the claimant had disability from August 9, 2016, to the date of the CCH as a result from the injury sustained on (date of injury); the claimant's date of MMI, which cannot be after November 8, 2017, the stipulated date of statutory MMI; and the claimant's IR.

(Dr. H) is the most recently appointed designated doctor in this case. On remand the ALJ is to determine whether Dr. H is still qualified and available to be the designated doctor. If Dr. H is no longer qualified or available to serve as the designated doctor, then another designated doctor is to be appointed to determine the claimant's MMI and IR for the (date of injury), compensable injury, if necessary.

The certification of MMI cannot be after November 8, 2017, the stipulated date of statutory MMI. The certification of MMI should be the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated considering the physical examination and the claimant's medical records. The assignment of an IR is required to be based on the claimant's condition as of the MMI date considering the medical records and the certifying examination and according to the rating criteria of the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides) and the provisions of Rule 130.1(c)(3).

The parties are to be provided with any new MMI/IR certification from the designated doctor and are to be allowed an opportunity to respond.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the ALJ, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Department of Insurance, Division of Workers' Compensation, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays

and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **NEW HAMPSHIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218.**

Carisa Space-Beam
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Margaret L. Turner
Appeals Judge